Supreme Court, U. S.
FILED
DEC 3 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 75-312

ROMAN GRIBBS, Mayor of the City of Detroit, et al.,

Petitioners,

v.

AMERICAN MINI THEATRES, INC., a Michigan corporation, and PUSSY CAT THEATRES OF MICHIGAN, INC., a Michigan corporation,

Respondents.

— — —

ROMAN GRIBBS, Mayor of the City of Detroit, et al.,

Petitioners,

v.

NORTOWN THEATRE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 28, 1975
CERTIORARI GRANTED OCTOBER 20, 1975

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
962-8745—962-8732

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APPENDIX J

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND AFFIDAVITS IN SUPPORT THEREOF, IN NORTOWN CASE

(A 97)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Nortown Theatre, Incorporated, a body corporate of the State of Michigan, Plaintiff, vs. Roman Gribbs, Mayor, John Nichols, Police Commissioner, Michael Glusac, Corporation Counsel, Creighton Lederer, Acting Commissioner, of the Department of Building and Safety Engineering, Charles A. Blessing, Director-Secretary of the City Planning Commission, jointly and severally, Defendants.	Civil Action File No. 39796

Defendant's Motion for Summary Judgment

Now come the Defendants, Roman S. Gribbs, Mayor, John F. Nichols, Police Commissioner, Michael M. Glusac, Corporation Counsel, Creighton Lederer, Acting Commissioner of the Department of Building and Safety Engineering, Charles A. Blessing, Director-Secretary of the City Planning Commission, by their attorneys, Michael M. Glusac, Corporation Counsel, Maureen P. Reilly and John E.

Cross, Assistants Corporation Counsel, and in accordance with the provisions of Rule 56(b) of the Federal Rules of Civil Procedure move this Honorable Court for a Summary Judgment for the following reasons:

1. The Complaint filed by the Plaintiff fails to state a claim against the Defendants upon which relief can be granted.

(A 98) 2. That Plaintiff's allegation of a deprivation of Civil Rights by reason of the enactment of allegedly unconstitutional ordinances is without merit in fact and in law.

This motion is based upon affidavits of Dr. Mel Ravitz, Sociologist; William Walsh, Realtor; Ogust Mai Stewart, Realtor; Gail Sheehy, Contributing Editor, New York Magazine; and Lino Canevaro, Head Planner, City Plan Commission, Exhibits and Brief in Support of Motion for Summary Judgment, all of which are filed herewith.

Respectfully submitted,

Michael M. Glusac
Corporation Counsel
Maureen P. Reilly
John E. Cross
Assistants Corporation Counsel
Attorneys for Defendants
1010 City-County Building
Detroit, Michigan 48226
224-4557
By: /s/ Maureen P. Reilly

April 23, 1973

EXHIBIT 1

(A 99) *Affidavit of Mel Ravitz*

State of Michigan,
County of Wayne—ss.

Mel Ravitz, being first duly sworn, deposes and says:

That he was born in New York City, January 7, 1924 and has been a resident of the City of Detroit since 1929; that he was educated in the Detroit Public schools, graduated from Detroit Central High School in 1942 and received a Bachelor of Arts Degree in history from Wayne University in 1948, was granted an M.A. Degree in Sociology from the New School for Social Research, New York, 1949, and was awarded a Ph.D. Degree in sociology from the University of Michigan, 1955.

That he served as a news editor of Radio Station WDET in 1949 and was Director of Community Organizations for the Detroit City Plan Commission, 1953 to 1960, and presently holds the rank of Professor of Sociology at Wayne State University where has has taught since 1949. In 1961 he was elected to the Detroit Common Council for a four-year term; re-elected in 1965 and again in 1969. In 1966, he was elected Chairman of the Wayne County Board of Supervisors; re-elected in 1969. In 1968, elected Chairman of the Metropolitan Detroit Youth Foundation; re-elected in 1970. In 1968, elected Vice Chairman of the Southeast Michigan Counsel of Governments; re-elected in 1969. In 1969, elected President, Detroit Common Council. In 1970, elected Chairman of the Southeast Michigan Council of Governments; re-elected in 1971.

That he is a member of American Sociological Association, Ohio Valley Sociological Society, Michigan Sociologi-

cal Society, American Federation of Teachers, Comprehensive Health Planning Council of Southeast Michigan, Family Service Society of Detroit, TB (A 100) and Health Society, Detroit Chapter, National Hemophilia Foundation.

That he is the author of more than 44 articles on the subject of urban problems and social action some of which are as follows: "The Sociologist as a Participant in an Urban Planning Program", (Journal of the American Institute of Planners, Spring, 1954, Vol. XX, No. 2.); "Urban Renewal Faces Critical Roadblocks", Journal of the American Institution of Planners, Winter, 1955, Vol. XXI, No. 1; "Some Socio-Demographic Considerations of Settlement House Relocation", The Journal of Educational Sociology, April, 1956, Vol. 29, No. 8; "Block That Blight", Adult Leadership, May 1956, Vol. 5, No. 1; "Detroit Social Workers Mobilize Citizen Aid for Urban Renewal", (with Adelaide Dinwoodie) Journal of Housing, July, 1956, Vol. 13, No. 7; "Use of the Attitude Survey in Neighborhood Planning", Journal of the Institute of Planners, Fall, 1957, Vol. XXIII, No. 4; "Urban Renewal and the Changing Pattern of the City", Alpha Kappa Deltan: A Sociological Journal, Winter, 1958, Vol. XXVIII, No. 1; "Urban Renewal: A Challenge to Sociologists", Notes to an Exhibit, Detroit City Plan Commission, Mimeographed, Fifty-first Annual Meeting, American Sociological Society, Detroit, September 1956; "The Culture Concept and Urban Design", The Student Publication of the School of Design, North Carolina State College, Vol. 8. No. 3, 1958; "The Sociologist as A Policy Maker in the Planning Process", Graduate Comment, April 1964, Vol. VI, No. 5; "Urban Conditions that Challenge the University", the Educational Record, Published by the American Council on Education, Washington, D.C., Summer, 1965; "Is Detroit Different?" Agenda, January, 1966, Vol. 2, No. 1; "Cities are Changing", Educational Leadership, October, 1967, Vol. 25, No. 1; and

"The Crisis in Our Cities: An (A 101) Action Perspective", in A City in Racial Crisis, (ed.) Leonard Gordon, Wm. C. Brown Publishers, U.S.A., 1970; "Urban Education: Today and Tommorrow", in Urban Education in the 1970's, (ed.) A. Harry Passow, Teachers' College Press, Teachers' College, Columbia University, New York, 1971.

That he is familiar with the Official Zoning Ordinance of the City of Detroit and more particularly with Section 66.0000 which provides for the regulation of bars, motels, pawn shops, taxi-dance halls, adult book stores, adult motion picture theaters, and cabarets which offer topless dancing. That the ordinance in question seeks to restrict the concentration of the specified uses on the ground that any such concentration is an actual danger sign in a residential neighborhood. It is such a threat in that it leads people to believe the neighborhood is declining and more of the kind of people who accept a declining neighborhood will flock there. This process hastens the reality of neighborhood decline.

That many people who live in neighborhoods in the City view a concentration of the above mentioned uses as undesirable and believe it is bad. Here a basic sociological axiom is relevant: if people believe something is true even if it is not originally, they will tend to act as if it were true and in so doing help produce the condition that was originally only believed. If residents of any neighborhood believe that the concentration of the proscribed uses damage the neighborhood they will act as if it were true and will seek to move away and allow in people with different standards; they will allow their property to decline, they will not engage in the full range of conservation attitudes and activities so (A 102) necessary to the maintenance of a healthful residential neighborhood.

That it is a fact that the concentration of such proscribed uses where the people don't want them leads inevitably to

rate cutting, indiscriminate displays of merchandise, illegal activities in order to attract scarce customers all of which helps to deteriorate a neighborhood.

That a residential neighborhood is a very fragile thing. It can be ruined very easily and ruin comes usually not by dramatic physical events, such as sheer age or the sudden invasion of barbarians to an area. Ruin comes to a neighborhood because its residents somehow begin to have their confidence in their area shaken. It matters not what the cause of this shakened confidence, whether it is a legitimate or phony cause. Good neighborhoods are maintained because people who live in them believe that they are sound and good and will continue to be so in the months and years ahead. It is far too risky for a city to allow indiscriminately into residential areas any number of commercial uses which have already been identified as those whose concentration help shake peoples confidence.

That rightly or wrongly, these uses in the minds of many people including the legislative body of the City of Detroit are the symbols of decay and deterioration. They are not the only such uses; there are other uses mentioned throughout the ordinance which also have special controls because they too have under certain circumstances undesirable images.

(A 103) That we should recognize that most normal residential neighborhoods have certain cohesion and stability that is sufficient to permit them to function adequately and healthfully and to resist a few of the regulated uses. A neighborhood can handle more such uses if they are spaced so as to have no more than two per thousand feet. Some neighborhoods, it was recognized, could be maintained as sound and secure with even more than the permitted two uses per thousand feet. Accordingly, the ordi-

nance permits the waiver of this distance requirement depending upon the condition of the neighborhood and the attitudes of its people.

That some people have suggested that the problem is really not one of the concentration of uses but rather a police problem. This begs the question. Obviously, the police cannot be on daily duty in front of the uses mentioned above. Moreover, even if they could, this would not alter the residents image of these uses and their consequent behavior. Rather than attempt the impossible job of police control, this ordinance aims to prevent the concentration of those uses that serve as magnets of activities that are deemed to lead to neighborhood deterioration. This is a better method than attempting to police after the uses are installed.

That I recoginze further that use of zoning instrument to control the concentration of uses is in itself unusual. Usually a Zoning Ordinance seeks deliberately to concentrate certain kinds of uses so as to keep them from interfering with each other. The use of a Zoning Ordinance to scatter or disperse uses is in itself a rarity. This exception to (A 104) normal use of the Zoning Ordinance is explained, I believe, by the particular nature of the uses in question. Were they the sort that could flourish under conditions of concentration, then, indeed, we would seek to house all of them in one or two sections of the City. They are not, however, uses of this sort; like other commercial uses, they require proximity to residential areas and access to a suitable market. For this reason we cannot apply the usual zoning approach to them.

That I think the ordinance has worked very effectively. It was aimed at protecting residential neighborhoods from the concentration of uses deemed inimical to sound neigh-

borhood living. To a very significant extent, I believe this ordinance is achieving its objective.

Let me note that failure to protect residential neighborhoods would mean an extension of blight and decay to other areas of the city, thereby nullifying the joint city-federal efforts to eliminate slums and to prevent them.

Deponent further sayeth not.

/s/ Mel Ravitz

Subscribed and sworn to before me this 23rd day of April, 1973.

Lena Bommarito
Notary Public, Wayne County, Michigan
My commission expires July 20, 1975

(A 105)

CITY OF DETROIT
Common Council

October 17, 1962

Mr. John F. Hathaway
Assistant Corporation Counsel
10th Floor, City-County Building
Detroit 26, Michigan

Dear John:

This letter is in response to your request for my observations on the Anti-Skid Row Ordinance.

Let me begin by recognizing that this ordinance is no guarantee that skid rows will be eliminated from urban areas; indeed, as a sociologist I well recognize that skid

row is more than a mere concentration of certain kinds of physical uses. Conversely it is possible to have a concentration of the proscribed uses and still not have a blighted area.

I recognize further that use of a zoning instrument to control the concentration of uses is in itself unusual. Usually a Zoning Ordinance seeks deliberately to concentrate certain kinds of uses so as to keep them from interfering with each other. The use of a Zoning Ordinance to scatter or disperse uses is in itself a rarity. This exception to the normal use of the Zoning Ordinance is explained, I believe, by the particular nature of the uses in question. Were they the sort that could flourish under conditions of concentration, then, indeed, we would seek to house all of them in one or two sections of the city. They are not, however, uses of this sort; like other cemmercial uses, they require proximity to residential areas and access to a suitable market. For this reason we cannot apply the usual zoning approach to them.

I think the ordinance has worked very effectively. It was aimed at protecting residential neighborhoods from the concentration of uses deemed inimical to sound neighborhood living. To a very significant extent, I believe this ordinance is achieving its objective.

(A 106) Let me note that failure to protect residential neighborhoods would mean an extension of blight and decay to other areas of the city, thereby nullifying the joint city-federal efforts to eliminate slums and to prevent them.

The ordinance in question seeks to restrict concentration of six specified uses on the ground that any such concentration is an actual danger sign in a residential area. It is such a threat in that it leads people to believe the neigh-

borhood is declining, and more of the kind of people who accept a declining neighborhood flock there. This process hastens the reality of neighborhood decline.

It is argued that the proscribed uses serve the people presently living in a neighborhood. To a limited degree this is true, but more to the point is the fact that a concentration of such uses serves to attract people who frequent these places and to drive away people who don't.

Another related point must be made too: many people who live in many areas view such concentration as undesirable and believe it is bad. Here a basic sociological axiom is relevant: if people believe something is true, even if it is not originally, they will tend to act as if it were true, and in so doing help produce the condition that was originally only believed. If residents of any neighborhood believe that the concentration of the proscribed uses damage the neighborhood, they will act as if it were true and will seek to move away and allow in people with different standards; they will allow their property to decline; they will not engage in the full range of conservation attitudes and activities so necessary to the maintenance of a healthful residential neighborhood.

As an actual fact that concentration of such proscribed uses where the people don't want them leads inevitably to rate cutting, indiscriminate displays of merchandise, illegal activities in order to attract scarce customers. These things, too, help to deteriorate a neighborhood.

A residential neighborhood is a very fragile thing. It can be ruined very easily. And ruin comes usually not by dramatic physical events, such as sheer age or the sudden invasion of barbarians to an area. Ruin comes to a neighborhood because its residents somehow begin to have their confidence in their area shaken. It matters not what the

cause of this shaken confidence, whether it (A 107) be a legitimate or phony cause. Good neighborhoods are maintained because people who live in them believe that they are sound and good and will continue to be so in the months and years ahead. It is far too risky for a city to allow indiscriminately into residential areas any number of commercial uses which have already been identified as those whose concentration help shake people's confidence.

The question has been raised: Why pick on these particular uses? The answer is simply that rightly or wrongly these uses in the minds of many people are the symbols of decay and deterioration. They certainly are not the only such uses that should be controlled; all night movies, burlesque shows, drive-ins, etc., also must be controlled, because they, too, have the same undesirable image.

Let us recognize that most normal residential neighborhoods have a certain cohesion and stability that is sufficient to permit them to function adequately and healthfully and to resist a few such proscribed uses. A neighborhood can handle more such uses if they are spaced so as to have no more than two per thousand feet. While two was originally an arbitrary number, experience has shown that there is some justification for it. Some neighborhoods, it was recognized, could be maintained as sound and secure with even more than the permitted two uses per thousand feet. Accordingly, the ordinance permits the Common Council to grant leeway in a neighborhood depending on the particular additional use and on the condition of the neighborhood and the attitudes of its people.

Some people have suggested that the problem is really not one of concentration of uses, but is rather a policing problem. This begs the question. Obviously, the police cannot be on daily duty in front of each such use. More-

over, even if they could, this would still not alter the residents' image of these uses and their consequent behavior. Rather than attempt the impossible job of police control, this ordinance aims to prevent concentration of those uses that serve as magnets of activities that are deemed to lead to neighborhood deterioration. This is better than attempting to police after the uses are installed.

Other people have contended in specific instances that their one more use will not make any difference in the area. This may be true, and it is within the judgment of the Common Council to determine whether it will or won't make any difference. This is (A 108) a sphere of judgment which thus far has been well exercised.

In summary then, John, I believe the ordinance is a very good one and that it has been applied with proper discretion and eminent reasonableness by both the Plan Commission and the Common Council.

I trust this letter will serve your purpose.

Sincerely,

/s/ Mel

EXHIBIT 2

(A 109)

DETROIT POLICE DEPARTMENT

Inter-Office Memorandum

Date April 10, 1973

To: Assistant Corporation Counsel Maureen Reilly

Spbject: Escalation of Adult Type Businesses in Detroit Area.

Since the Redrup decision, (Magna Carta for pornographers), we have seen an escalation of adult book stores from two in Detroit to a total of thirty-five at the present time in the Detroit area. The number of adult theatres also has escalated from two to twenty-five. There are at least seven art studios or camera clubs in the area that provide live human models. These adult type businesses have been concentrated in certain areas or clusters, however, they are now penetrating the fringe areas.

Following is a list of adult type businesses by area or cluster:

Downtown Area:

1543 Broadway	Broadway Book Shop	Nasri Fiani
1 Cadillac Square	Follies Theatre	Gorelick Bros.
140 Cadillac Square	Richard's Place (book store)	John Schipiano
58 E. Columbia	Gem Art Theatre	Gem Amus. Co.
1021 Farmer	Projection Room Mini Theatre	G.A.L.L. Corp.
62 Monroe	Cinex Theatre	Aaron Kolt
66 Monroe	Tip Top Book Store	Royal News Co.
118 Monroe	National Burlesk	Gem Amus. Co.

Total 8

Woodward Corridor:

2511 Woodward	Stone Theatre	Milton Jacobson
2967 "	Regal Books	Richard Gawthrop
3929 "	Peek-A-Rama Theatre	G.A.L.L. Corp.
3925 "	Scorpio Book Store	G.A.L.L. Corp.
12119 "	Monterey Party Store (books)	Mr. Channan
13304 "	Movie Screening Room	Al Huley (G.A.L.L. Corp.)
13308 "	Studio of Living Art	Roger Harvey
13527 "	World Wide Magazines	Frank Hakim
13531 "	Book Center	Richard Rose
13722 "	Coin Shop (books)	William Maloney
13843 "	Hiland Theatre	Gorelick Bros.
14041 "	Art Adult Books	George Lucas
16445 "	Centerfold Studio	William Robinson
16145 "	Blue Orchid Studio	Donald Morgan
16473 "	Krim Theatre	Charles Cobb
16514 "	Live Figure Models	Herman Schnnault
16533 "	Six Mile Theatre	Joseph Busic
16541 "	Uptown Book Store	Soof & Mazellis
16549 "	Woodward—6 Mile Theatre	George Luca
17530 "	Oxford Book Store	John Pruitt
17730 John R.	L'Art Cinema	Herman Sussman
18944 Woodward	Adult Book Store	Charles Cobb
20500 "	Frisco' Adult Mini Theatre	Gabriel Glantz

Total 23

West Eight Mile—Schaefer Cluster:

13625 W. 8 Mile Rd.	Lido Mini Theatre	Gorelick Bros.
13705 "	Adult News Book Store	Fred Navarro
13715 "	Book Shack	Melvin Harris
13737 "	Auroral Morning Studio	—
14011 "	Blue Orchid Studio	Donald Morgan
14305 "	Discount Book Center	Stanford Sikor
16401 "	Uptown Book Store	Soof & Mazellis

Total 7

West Side Area:

3520 Grand River	Globe Art Theatre	Louis Brooks
2002 Dragoon	Eddie's News Stand	Ed Korzenowski
7604 W. Vernor	Fun Shack	Ralph Zammit
6356 Michigan	Palace Art Studio	—
6739 Michigan	Jack's Book Store	Jack Kantor
8418 Michigan	Adultfare Mini Theatre	John G. Clark

Total 6

North West Area:

16641 W. Warren	Leisure Book Mart	Ed Burdziak
18728 W. Warren	Escape Book Store	Thomas Kalita
17610 Joy Road	Limepole Book Inn	Smith—Wiska
18211 Joy Road	Hazel's Book Center	Hazel Lewan
15830 Plymouth	Atlas Theatre	Bernard Scklussel
16521 Plymouth	Parisian Book Store	Frank Julian
15751 Grand River	Book Shack #2	Melvin Harris
13135 Fenkell	Variety Theatre	Albert Dizel
21220 Fenkell	Irving Theatre	Bernard Schlussel
21234 Fenkell	Adult World Book	John P. Housman
16750 Telegraph Road	Pussy Cat Mini Theatre	Gorelick Bros.
22575 W. 8 Mile Rd.	Penthouse Theatre	Gorelick Bros.
17344 W. 7 Mile Rd.	Adult Book Store	Charles Cobb
13148 W. 6 Mile Rd.	Adult Book Store	Sheldon Hootner

Total 14

East Side Area:

14321 Harper	Merit Books	D'Angelo-Marrone
13914 E. Jefferson	Moulin Book Shop #1	Slymon Hakim
14271 Harper	" #2	"
12719 Gratiot	Guild Theatre	Albert Degel
14259 "	Mini Book Shoppe	Frank Julian
13898 E. 8 Mile Road	Adult City Books	Charles Bauer
7706 E. 7 Mile Rd.	Nortown Theatre	Nortown Theatre, Inc
10321 Van Dyke	Sarra's Emporium	Sara Gamble

Total 8

It should be noted that a number of the listed establishments are operated by the same persons or corporations.

/s/ Paul Smith
Patrolman
Badge #1682
Obscenity Detail
Liquor License Unit

EXHIBIT 3

(A 112)

Affidavit of William P. Walsh

State of Michigan,
County of Wayne—ss.

William P. Walsh, being first duly sworn, deposes and says:

1. That he is a lifetime resident of the City of Detroit, Michigan, attended the University of Detroit, and has been actively involved in the real estate business since 1950 as a member of the Frank R. Walsh Company, and the George W. Drennan Company; that he is presently President of the William P. Walsh Company, President of Urban Dynamics, Inc., Vice President of Dreker, Inc., Investment Counselor, Trust Manager and Fiscal Agent for Midwestern Real Estate Trust; member of the Commercial Development Committee of the Urban Development Council of the Greater Board of Commerce; Broker member of the Detroit Real Estate Board; Member of the Michigan Real Estate Association, the National Association of Real Estate Boards, and the American Right of Way Association.

2. That he has been actively involved in and has extensive experience in property management brokerage, appraisal and consulting work, and appraisal review work,

and is frequently engaged as a consultant on values for purchase or sale of real estate.

3. That his general appraisal and consulting services have been rendered to the following clients:

Archdiocese of Detroit, Michigan Lutheran College, Allied Supermarkets Inc., Koepplinger Bakery, Federal Department Stores, Pavillion Apartments, Lafayette Towers, Cunningham Limp (A 113) Corporation, Crawford Door Corporation, Standard Oil Company, Sperry Rand Corporation, The Michigan Bank, the Commonwealth Bank, The Detroit Bank and Trust, The Chrysler Corporation and numerous other private individuals and companies, including a number of residential developers, brokers and investors. Included among the legal firms for which work has been done:

Miller, Canfield, Paddock and Stone
Travis, Warren, Nayer & Burgoyne
Levin, Levin, Garvett & Dill
Alspector, Sosin, Mittenthal & Barson
Dahlberg, Simon, Jayne, Woolfendon & Gawne
Raymond, Chirco, Fletcher, Donaldson & Ruwart
Daniels, Zussman, Wienner & Seel
Moll, Desenberg, Purdy, Glover & Bayer.

4. That his general appraisal and consulting services have been rendered in the following Michigan cities:

Detroit, including the following projects: Corktown Redevelopment Project, Lafayette Project, Central Business Project I, III and V known as Skid Row, Greektown and the Kern's Block, Medical Center Projects I & II, Elmwood Park Projects, I, II & III, University City Projects I & II, West Side Industrial Projects I & II, Wholesale Distribution Center, The Port Development Project and North In-

dustrial Project, Milwaukee Junction Rehabilitation Project II, Urban Mass Transportation Project I & II.

Flint, Jackson, Lansing, Kalamazoo, Port Huron, Mt. Clemens; Wyandotte, St. Clair, St. Clair Shores, Centerline, Clawson, Muskegon Heights; Warren, Westland, Southfield, Saginaw, Lincoln Park, Ferndale, Wayne, Garden City, Inkster, River Rouge, Hamtramck.

(A 114) 5. That Urban Renewal Studies made in several of the aforementioned cities included the following services:

Acquisition Appraisals
Appraisal Reviews
Special Consulting Work
Land Utilization and Marketability Studios
Land Disposition or Reuse Appraisals
Transient Housing Studies
Public Housing Turn Key Projects
Low Income Housing Studies.

6. That his general appraisal and consulting services have been rendered in making right-of-way studies for the Michigan State Highway Department, and the Wayne County Road Commission.

7. That he has qualified as an expert in the following courts:

United States Federal District Court
United States Tax Court
Wayne County Circuit Court
Wayne County Probate Court
City of Detroit Recorder's Court
Oakland County Circuit Court
Crawford County Circuit Court
St. Clair County Circuit Court
Otsego County Circuit Court
Macomb County Circuit Court.

8. That within the Institute of Urban Dynamics, he has done extensive work in the study and analysis of Urban, Physical, Social and Economic systems in order to initiate normal sponsorship for effective remedial programs and to develop methods for the successful transfer of programs which have proven to be productive in other communities.

9. That from his experience he is convinced that regulation of certain uses of property is necessary to preclude (A 115) their concentration in business or residential areas in order to avoid depreciation of property valves, large scale exit of residents and businesses, and a resulting blighting effect on neighborhoods.

10. That certain businesses, such as bars, motels, pawn shops, taxi dance halls, etc., were correctly classified as "regulated uses" in Section 66.0000 of the Official Zoning Ordinance of the City of Detroit in 1962, which prohibited their locating within 1,000 feet of each other, as these businesses when clustered together have a debilitating effect on the surrounding neighborhood.

11. That these businesses, and others like them, which cater not to the needs of the immediate neighborhood, but attract customers from outside the neighborhood, and which serve transient residents, create a concern and even hostility in the minds of the persons living and working nearby and, in fact, act as a deterrent to prospective buyers of businesses and residences within the area.

12. That these persons who are prospective buyers in the neighborhood as a matter of course investigate the surrounding business area referred to as the "perception area" by the real estate business to determine the stability and viability of the neighborhood.

13. That prospective residential buyers will refuse to consider homes in the neighborhoods where the immediate adjacent business district (the perception area) supports businesses such as those mentioned above which are usually (A 116) associated in the minds of the prospective buyers with unstable and declining property values.

14. That when it first appears that these types of businesses are beginning to cluster in a neighborhood, those nearby residents and businessmen who can afford to move will immediately offer their property for sale, and assume any financial loss rather than gamble on the anticipated decline in property values; that the anticipation whether or not warranted in fact is sufficient to and does cause the property owners to flee the area; that the appearance of more than one or two vacant store fronts or "For Rent" signs in a business district, creates an apprehension in the minds of the prospective buyers who reject the neighborhood as being unstable; the property remains vacant and prices inevitably decline. That other neighboring residents and businessmen recognizing the situation realize that their property values are in jeopardy, and so offer their homes and businesses to "get out while the getting's good;" that the resulting surplus of properties offered on the market causes a further decline in sale prices, that a home which would sell for $45,000.00 outside the City of Detroit is sold with difficulty at a loss of almost half of that amount in these declining neighborhoods.

15. That a purchaser who buys a home at the reduced sale price more often than not is unable, because of his income bracket, to maintain the home he has purchased at the reduced rate.

(A 117) 16. That the City of Detroit by adopting the Zoning Law which prohibits clustering of these regulated

uses is an effective tool to prevent the process of deterioration of neighborhoods as described above; that the location of adult types of entertainment; i.e., adult book stores, adult motion picture theaters and cabarets which offer topless dancing, etc., are inimicable to the stability of a neighborhood, particularly because of the fact that they too cluster together, and within a very short time create in the minds of the adjacent residents and businessmen the same concern and hostility which is evoked upon the appearance of the other businesses classified as regulated uses.

17. That the appearance of one or more businesses offering adult types of entertainment causes the reaction described above and from experience it is known that the decay process in the neighborhood is iminent.

18. That the location of adult types of businesses must be regulated as are other "regulated uses," in order to avoid the inevitable exodus from neighborhoods caused by the cluster of these types of businesses.

/s/ William P. Walsh

Subscribed and sworn to before me this 23rd day of April, 1973.

/s/ Rosemary Yurik,
Notary Public, Wayne County, Michigan
My commission expires July 26, 1976

EXHIBIT 4

(A 118)

Affidavit of Ogust Mai Stewart

State of Michigan,
County of Wayne—ss.

Ogust Mai Stewart, being first duly sworn, deposes and says:

1. That she resides at 16950 Normandy at Six Mile Road in northwest Detroit; that she is co-owner, with her husband, of the American United Real Estate Corporation, located at 13725 West Eight Mile Road, 1½ blocks west of Schaefer, in the City of Detroit; that she has been located at this business address for 3½ years; that she obtained her B.A. (Magna Cum Laude) Degree from Clark University, Atlanta, Georgia, in 1946; that she did postgraduate work at Wayne University in 1947 and 1948, and at the University of Michigan in the Summer of 1948; that she taught English at Northwestern High School from 1954 to 1967; that she had been active in the real estate field for 5½ years.

2. That the West Eight Mile-Schaefer business community where my business is located is comprised, generally, of banks, supermarkets, restaurants, typical gasoline stations, and other related service stores. On the east side of Schaefer, near Eight Mile, is Blackstone Manor, a 300 unit co-operative. The homes, generally, are a combination of brick, single family residences, including colonials, ranches, bungalows, ranging from $18,000 to $40,000. Many homes located in the Outer Drive-Penmbroke area range even higher.

(A 119) 3. That during the past nine months, several pornography businesses have invaded the West Eight

Mile-Schaefer Road area. Included in this number are two book stores, a theater and, most recently, a Studio offering live girls as models in a shop entitled: "Auroral Morning," which has been raided by the Detroit Police Department several times. This two block strip is ablaze with multi-colored expensive neon signs that publicize a variety of offerings. Shock, disgust and utter disbelief at the influx of this kind of business compels me to file this affidavit.

4. In the immediate strip, private parking is grossly limited. In the block between Lesure and Tracey our company, American United Real Estate Corporations, owns the only private lot in the block. The pornography businesses are attracting predominantly migrant, middle age persons, driving expensive cars, who use our lot as there is not sufficient street parking.

5. I cannot prove the point, but I am inclined to believe that some prurients' shops tend to draw sex deviates. Recently, the owner of the small delicatessen next door, Mr. Thomas Lumpkin, related to me the following incident: Karen Simpson, a sixteen year old daughter of his friend, (daughter of Mr. and Mrs. Ralph Simpson of Lesure Avenue), a week ago, ran into his store in an attempt to escape from a male who had been riding on a bus with her to this area. Karen Simpson stated that she had been accosted by this person, and pointed him out. Mr. Lumpkin later observed the person going into one of the porno shops.

Further, Mr. Lumpkin and his sales assistant, Dorothy Wheeler, have on three occasions removed lewd pictures (A 120) from 8 and 9 year old boys and girls, who buy candy and chewing gum in his store. These children stated: "We found these pictures on the ground outside."

6. Despite the fact that the community has not picketed nor publicized to a great extent their incense over the

invasion of these stores does not mean they are not terribly concerned over the impact these businesses have on the neighborhood—the attraction of undesirable persons and the turning away of desirable potential buyers. As a businesswoman who has felt the pulse of this community for 27 years, and has talked with such community leaders as Earl and Marie Bass, of the Schaefer-7 Mile Block Club Community Council, I am willing to state that this situation is becoming increasingly explosive.

7. I contacted the Mayor's Office and the Office of the Corporation Counsel early this year, and was told that if these businesses had located here prior to November 2, 1972, and were properly licensed at that time, they were non-conforming uses under the new zoning laws, and the City could not interfere with their operation, so long as they complied with the law.

8. It has been my experience in dealing with people interested in buying or leasing property that they first carefully check the type of businesses already located in the area. Certain kinds of businesses, particularly those which clearly serve the needs of the immediate neighborhood, will evoke an adverse reaction from the prospective buyer who believes that these businesses indicate a declining neighborhood. Prospective (A 121) clients are especially fearful if several of these kinds of businesses are grouped together. The grouping of the pornography businesses in our area is the cause of prospective buyers rejection of this area as a a possible area for their relocation. For example, a young doctor recently told me he would not consider this Eight Mile strip for his new clinic because of the porno businesses nearby.

9. Legitimate business properties are definitely being depreciated in value. Appraisals by mortgage companies,

banks and private lending institutions determine the economic status of property not only by cost value but most certainly by comparable values. The value of my building is determined not merely by structural soundness but also by location. The value of my building is greatly decreased now as a result of the influx of pornography businesses which have recently mushroomed in our area.

/s/ Ogust Mai Stewart

Subscribed and sworn to before me
this 23rd day of April, 1973.

/s/ Rosemary Yurik
Notary Public, Wayne County, Michigan
My Commission expires July 26, 1976.

EXHIBIT 5

(A 122)

Carl H. Schmidt Company
18405 W. Eight Mile Road
Detroit, Michigan 48235

BRoadway 3-8500

August 11, 1972

Honorable Roman S. Gribbs
MAYOR—CITY OF DETROIT
Executive Office
2 Woodward Avenue
Detroit, Michigan

Dear Mayor Gribbs:

After living my entire life in the city of Detroit (personal & business) I have reached a difficult decision—namely, I am moving the Carl H. Schmidt Company out of Detroit. I have intense personal loyalty to the City of Detroit, but I must be practical—here are the reasons:

1) The Uptown Book Store is operating an adult book store at 16401 W. 8 Mile—right next door. They have pornography available in their back room, and it is disgusting—and we have no desire to be this close to it or the people frequenting this store. You might remember some time ago that the neighborhood rose up and were able to prevent an adult movie house from opening up on the other side of our building because of zoning requirements—but apparently there is nothing on the Detroit books to stop this adult book store.

2) Our office has been broken into and robbed on 4 different occasions, and my car parked behind the building once—the financial and business time lost have truly hurt.

3) Detroit has a corporation tax and personal income tax, plus several other taxes which do not help the matter—although they are not the main factor.

Therefore, primarily because of the adult book store, we are leaving Detroit—we are a relatively small business and I am sure you are not going to lose any sleep over our move tonight—but we just wanted to keep you tuned in on what is going on around Detroit and hope that maybe you (A 123) can take action so as to prevent things like this in the future.

Sincerely,

/s/ Carl H. Schmidt, Jr.
CHS/paw

CC: Mel Ravitz
President—Common Council
CITY OF DETROIT
2 Woodward Avenue
Detroit, Michigan

CC: Mr. and Mrs. George LeVerge
20012 Archdale
Detroit, Michigan 48235

(A 124)

ANSWER FROM MAYOR GRIBBS

September 21, 1972

Mr. Carl H. Schmidt, Jr.
Carl H. Schmidt Company
16405 W. Eight Mile Road
Detroit, Michigan 48235

Dear Mr. Schmidt:

I was disturbed upon receiving your letter which indicated that you are planning to move the Carl H. Schmidt Company out of Detroit. At the same time you indicate an obvious interest in the welfare of this city.

I assure you that I share in your concern regarding the adverse effects that businesses such as adult bookstores have on adjoining businesses in communities such as yours.

As you probably know, I have organized as an adjunct to my office a Task Force on Licensing Procedure to attack this problem. Staffed with key representatives of the departments concerned with public health, safety, legal procedure, enforcement and licensing, it has as one of its responsibilities the review, enforcement and strengthening of our existing municipal codes in regard to legally defined obscenity and pornography.

The Task Force has recently submitted to the Common Council a package of sweeping new proposals to regulate and control adult bookstores and theaters. In addition, court cases from all areas of the country are being reviewed to assist in establishing effective enforcement of obscenity ordinances.

We are hopeful that these actions will alleviate the problems that these types of businesses create for the residents and businessmen in the Detroit community.

I am hopeful that your decision is not final. To this end, I am dispatching an executive member of the Mayor's Committee for Industrial and Commercial Development of the Community Development Commission to meet with you personally to discuss our plan to abate this public nuisance.

Sincerely

Mayor

RSG:sjh

EXHIBIT 6

(A 125)

AFFIDAVIT OF GAIL SHEEHY

State of New York }
County of New York } ss

GAIL SHEEHY, being first duly sworn, deposes and says:

1. That she obtained her B.S. Degree from the University of Vermont in 1958, and studied under Dr. Margaret Mead at Columbia University Journalism School, with fellowship in Interracial Reporting in 1970; that she was a feature writer for the New York Herald Tribune from 1963 to 1966; that from 1966 to 1973 she was a freelance writer, having articles published in Cosmopolitan, McCalls, Glamour, Good Housekeeping, London Sunday Telegraph, and the New York magazine; that from 1968 to the present time, she has been Contributing Editor for New York magazine; that her honors include the 1973 Alicia Patterson Foundation Fellowship Award, and the 1973 Communi-

cations Award for outstanding performance in magazine journalism, and the 1964 Newspaper Women's Club of New York front page award; that her books include *Panthermania: The Clash of Black Against Black in One American City,* Harper and Row, New York (1971), *Speed Is of the Essence,* Pocketbooks, Simon and Schuster, New York (1971); and *Hustling: Prostitution in Our Wide Open Society,* Delacorte, New York, 1973.

2. That she has engaged in extensive research and investigation of the impact of the location of adult entertainment businesses in Manhattan, New York, and has published her findings in the following articles: "Cleaning Up Hell's Bedroom", (A-126) New York magazine, November 13, 1972, and "The Landlords of Hell's Bedroom," New York magazine, November 20, 1972, and "The City Politic, More Questions and Some Answers on Hell's Bedroom," New York magazine, December 18, 1972 (attached hereto); that the facts related therein are true to the best of her knowledge and belief, and as to those matters therein stated to be upon information and belief she believes them to be true.

3. That as a result of my studies, I am convinced that the real battle in the war against pornography is happening in the streets of our cities. The real battle is with the criminalization of the sex business. What follows commercial pornography, which is the meat of the material offered by "adult" businesses, is prositution. What follows prostitution is street crime, and what follows the crime reports is the demoralization of the legitimate businessmen and the drying up of the tax bases of our cities.

4 That I have watched the sequence repeat itself in three different Manhattan neighborhoods over the last few years. First appears the dirty book store. Everyone is curious yellow. Next follows the coin-box peep show. It is

cause for a lot of bad jokes and Adults Only guffaws. One day a live sex show sprouts from a storefront, then a massage parlor, then two massage parlors and a pornographic movie, two pornographic movies and a prostitution hotel, and suddenly the marginal hustlers smell a rich new source and multiply and begin swarming out of the woodwork like roaches. The porno chic crowd is offended and moves on. The neighborhood is left in the grip of Mafia-backed massage parlor and hotel operators, Murphy men, cruising pimps, prostitute muggers, youth gang ripoff artists and the addicts who lie in (A 127) wait for any of the above, until they accumulate enough cash, and then jump them for a fix.

5. That my investigation shows that the landlords of the buildings where these adult entertainments are located live outside the Borough of Manhattan, and have no concern over the deterioration of the neighborhoods; that the man who brought us the pornographic film, "Schoolgirl," recently seized by the F.B.I., in various cities, had this comment when asked if he saw any connection between pornography and street crime, "That's the biggest bunch of crap. Carl Pomeroy, author of all the Kinsey books, he went all over the country to interview sex offenders. In no case were they interested in pornography." When I explained that my reference was not to sex crimes stimulated by pornography, but to the crime generated in neighborhoods that become centers of commercialized sex, and asked if he were concerned about the street crime in his city, he responded: "My home is in Hallandale, Florida." And then he began his pitch: "I'm a capitalist. I'm in a business where I can't survive if people don't come to my theaters . . . " He ended by cloaking himself in Constitutional piety: "There's no such a thing as a little pregnant. Censorship will just spread. People should have a right to

pay their money and see these pictures—that's the Americay way."

6. The real estate moguls of our cities don't care. When questioned, they plead that pornography tenants are too lucrative to resist.

(A 128) 7. Europe has grasped the real issue. The current rush of campaigns to halt the exploitation of pornography in Sweden, Denmark, West Germany, France, Britain and Italy is prompted not by a new Puritanism. It stems from street experience with criminality and drug peddling spawned by Europe's sex markets. Copenhagen officialdom has expressed concern about creeping underworld control of their capital. Even in West Germany, home of the legalized "sex supermarket" concept, authorities have recently mounted a stiff campaign against pornography and massage parlors. None of West Germany's cities which attempted to restrict prostitution to specific areas has been successful. Eros Center, Hamburg's six-year-old model segregated red light district, was expected to inspire copies in this county. But a funny thing happened just outside the enlightened Eros Center. Crime, violence and the number of pimp-controlled prostitutes all *increased.*

8. It is too easy to be a knee-jerk civil libertarian these days. If we don't sit up and face the real issue of criminization behind the boom in commercialized sex, our cities may soon be dancing their last tango.

9. In my opinion, therefore, it is imperative in order to preserve the stability of our neighborhoods to regulate adult businesses, not by relegating them to one particular zone, but by limiting the number and kind of adult businesses which may locate in any one area. It is only by

such regulation that the concentration of these businesses can be avoided, and the resulting street crime and deterioration of neighborhoods can be eliminated.

/s/ Gail Sheehy

Subscribed and sworn to before
me this 18th day of April, 1973.

/s/ Velma H. Dingle
Notary Public, Isle of New York
No. 31-6039350
Certification———————————
My Commission Expires March 10, 1974.

(A 129)

New York Magazine

December 18, 1972

THE CITY POLITIC

By Gail Sheehy

More Questions And Some Answers on Hell's Bedroom

Like many others, I applauded those civil libertarians in the sixties who defended our right to see *Oh! Calcutta!,* read Ralph Ginzburg's magazines and watch Lenny Bruce in a nightclub. I have no objection to people in the privacy of their homes watching a porno movie in the company of a naked puma.

Fine. But the Constitution is not a suicide pact. And things have changed. I have seen with my own eyes that street prostitution and public pornography attract criminals, generate crimes with real victims, subvert honest

policemen, demoralize legitimate businessmen, and veil a much deeper social problem than most people seem willing to face. I am the sort of person who believes that prostitution and pornography could not exist on the grand scale they have attained in midtown without the complicity of criminals (organized and otherwise), greedy landlords, and indifferent or venal public officials.

What we are seeing today in this city—indeed every major city—is the *criminalization* of prostitution and pornography. With every belly dancer on Bourbon Street or street pross on Eighth Avenue, there follow probably three junkies, a dozen ripoff artists and marginal hustlers, a fleabag hotel or massage parlor operator, in some cases a Mafia protection man, and always a pimp. Therefore—and let's set this straight once and for all—the struggle against big-city pross and porn is not a blue-noser's battle against sexual liberation; it is a war against crime of the rankest kind. If we lose, then legitimate businesses, frightened tourists and maybe even some of *us* will flee, our city's tax base will dry up and the city's luck will finally run out.

Well, we have to make our own luck. To that end, there are some people I'd like to ask more questions in the wake of my article, "The Landlords of Hell's Bedroom" (November 20):*

• • • • •

* N.B. The remainder of this Article and "The Landlords of Hell's Bedroom" are omitted here.

EXHIBIT 7

(A 140)

New York Times

December 18, 1972

DRIVE ON SMUT AIMS AT BUILDING OWNERS

By Edward Ranzal

The city broadened its anti-smut campaign in the Times Square area yesterday, moving against owners of buildings where peep shows operate. Heretofore, the city has acted only against the operators of peep shows.

Armed with a recent state Supreme Court decision requiring peep shows to have a city license, the Corporation Counsel, Norman Redlich, filed an action in Civil Court against the York Amusement Corporations, owners of a building at 1487 Broadway, near 43d Street, that houses a peep show.

At the same time, the owner of the peep show, Martin J. Hodas, whom law enforcement officers described as the "King of Peep Shows," was served in the action, returnable in 10 days. If found guilty, the owners and operators could be fined up to $100 a day for every day the peep show operates without a license.

Mayor Lindsay said that similar action would be taken against other peep-show premises, adding:

"For the first time we are moving not only against the peep-show operators, but also against the realtors who permit their buildings to be used for these shows.

"Other realtors with peep-show operations are on notice that they face similar legal action in the near future."

City officials said the new step was primarily an economic threat against property owners who allowed operation of peep-shows. The officials said many (A 141) land-

lords permitted the illegal operations to exist because of the exorbitant rents they got.

The move by the city was prompted by a recent decision by State Supreme Court Justice Myles J. Lane, who held that a peep show was in fact public amusement and therefore had to be licensed by the city's Consumer Affairs Department.

About 20 of the 50 peep-show operations in the Times Square area have closed since the ruling rather than apply for $100-a-year licenses, which also require the answering of a questionnaire that inquires into criminal convictions. Several operators have applied, but the Consumer Affairs Department said it had not yet granted any licenses.

No explanation was given why Mr. Redlich's office decided to move first against the York Amusement Corporation. The owners were————————————through their agent, Helmsley-Spear, Inc.————————————

————————————are coin-operated machines. For 25 cents a viewer can see about a two-minute segment, with a view of the entire film costing several dollars.

"My administration," Mayor Lindsay said, "will continue to work every possible way to make Times Square a safer and more desirable place for visitors, entertainment and business."

The antismut drive has focused thus far on massage parlors, narcotics traffickers and places of prostitution. Eight hotels in the Midtown area have been closed this year as part of the cleanup.

The police raids on so-called massage parlors (A 142) revealed that profits from pornography in the midtown area were far beyond what the police had believed possible. There were also indications that the operators of the parlors might be filming and taping customers' actions for potential blackmail.

The large amounts of cash found on hand—one parlor safe contained $17,000 in small bills—called attention to the fact that legitimate businesses were being driven out of the Times Square area because the "massage parlors" and storefront peep shows were paying double and triple the rent that legitimate businesses could afford.

Seymour Durst, the head of the Durst Organization, a large real-estate enterprise that is trying to drive pornography out of the midtown area, has stated that he had been offered $1,000 a month for small stores that he rented to little eating places for $500 a month.

"Peep shows," he said, "can pay a very high rent, and some property owners have figured that the only thing that will carry the property is porno."

EXHIBIT 8

(A 143)

Affidavit of Lino Canevaro

State of Michigan
County of Wayne—ss.

LINO CANEVARO, being duly sworn, deposes and says that he is a Head Planner with the City Plan Commission of the City of Detroit and that he has worked for the City Plan Commission for 16 years. Deponent further says that he is a graduate of Michigan State University, B.S., Wayne State University, M.A., (Urban Planning); that he is a member of the American Institute of Planners, the

American Society of Planning Officials, and the American Society of Landscape Architects; that he is a registered Community Planner and that he had previous employment with the United States Federal Government as a Planner for a period of four years.

Deponent further says that he was one of the participating authors of a book called "The New Zoning", edited by Norman Marcus and Marilyn Groves, published by Praeger Publishers, 1970.

Deponent further says that he was in charge of the drafting of the present Zoning Ordinance of the City of Detroit and is familiar with all of the studies made in the preparation of the City Zoning Ordinance.

Deponent further says that there are certain problems in urban living in a community the size of the City of Detroit that makes it necessary to place certain controls on various phases of land uses that are considered to be incompatible with or have an adverse effect on the stability and desirability of living areas. It has been my experience (A 144) and others in this field that certain commercial and transient residential uses have a high degree of tendency to blight surrounding neighborhoods and other uses in close proximity. When a number of these uses congregate in close promixity to each other, the possibility of creating blighted conditions increase.

The commercial uses which have a tendency to create blighting conditions include: bars, pawn shops, pool or billiard halls, shoeshine parlors, taxi dance halls, secondhand stores, adult book stores, adult movie theatres, and cabarets. The transient residential uses with this same potential includes: public lodging houses (flop houses) motels, and hotels.

When the right mixture of these uses are concentrated in a small area, we have what is commonly called a "Skid Row" area.

Aside from the deleterious appearance usually associated with this type of area, numerous social problems are also generated by "skid rows". These include the alcoholic, the drug addict, prostitution, crime, low rent housing for the single adult attracting senior citizens on a fixed income, the mission church, food kitchens, pan-handlers, and generally an assembly point for all the human derelicts of society.

In order to prevent the establishment of these types of areas, the Common Council recommended that the City review the location for those types of business and housing associated with "skid rows."

Deponent further saith not.

/s/ Lino Canevaro

Subscribed and sworn to before me this 23rd day of April, 1973.

/s/ Lena Bommarito
Notary Public, Wayne County, Michigan
My Commission expires. July 20, 1975

(A 145)

APPENDIX K

ANSWER TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND AFFIDAVIT IN SUPPORT THEREOF

(U. S. District Court—Eastern District of Michigan—Southern Division)

Nortown Theatre, Incorporated, a body corporate of the State of Michigan, Petitioner, vs Roman Gribbs, Mayor of the City of Detroit, et al, Defendants, jointly & severally.	No. 39796

Now Comes the Petitioner, Nortown Theatre, Inc., by and through its attorneys, Stephen M. Taylor, Esquire, and Robert Eugene Smith, Esquire, and moves this Honorable Court to deny defendants' Motion for Summary Judgment for the following reasons:

1. That the opposing parties have failed to state a defense upon which relief can be granted and/or in the alternative, the opposing parties have failed to state a valid defense to claim stated against them.

2. That defendants' Motion for Summary Judgment and the Affidavits attached thereto fail to specify any facts upon which their motion can be based; that there is a genuine issue of fact in the matter before the Court; that in the alternative taking all of the facts specified in the Affidavits submitted by the defendants in their Motion for Summary Judgment to be true, defendants are (A 146) not entitled to Summary Judgment.

3. That in the alternative taking all of the facts specified by defendants in their Affidavits attached to their Motion for Summary Judgment, as true, Petitioner is nevertheless entitled to a Judgment as a matter of law.

That this Answer is based on the Affidavit of James C. Rodgers and the Memorandum filed in support of Petitioner's Complaint and the Memorandum of Law attached hereto and filed in response to defendants' Motion for Summary Judgment.

Respectfully submitted,

By: /s/ Stephen M. Taylor
Attorney for Petitioner
1500 First National Building
Detroit, Michigan 48226
962-3302

(A 147)

Affidavit

State of Michigan
County of Wayne—ss.

James C. Rodgers, being first duly sworn, deposes and says:

1. That he has been actively involved in the real estate business since 1936 and is licensed as a real estate broker in the State of Michigan; that he is presently President of Rodgers & Associates, Inc., located at 25805 Harper Ave., St. Clair Shores, Michigan; that he is a member of the following professional associations:

American Institute of Real Estate Appraisers

Society of Real Estate Appraisers—Senior Real Estate Analyst—Past President of Greater Detroit Chapter

American Society of Appraisers—Past President of Detroit Chapter

American Right of Way Association

Macomb County Board of Realtors

Detroit Real Estate Board

Michigan Real Estate Association—National Asociation of Realtors

American Arbitration Association

2. That he has been actively involved in real estate appraisal and consulting work since 1947, in and about the Detroit metropolitan area and the State of Michigan.

3. That his appraisal and consultant services have been retained by the following:

Equitable Life Assurance Society, Acacia Mutual Life, Connecticut General Life, Ohio Mutual Life, Standard Accident Insurance, Reliance Insurance, Insurance Co. (A 148) of North America, United States Fidelity & Guaranty, Maccabees Mutual, State Life of Indiana, Manufacturer's Life of Canada, Midland Mutual, Aluminum Co. of America, Brown & Williamson Tobacco, Chrysler Corporation, City of Warren, Colonial Federal S & L Ass'n., Consumers Power, Detroit Federal S & L Ass'n, Detroit Board of Education, Detroit Corporation Counsel, Detroit Housing Commission, Detroit Bank & Trust, Detroit Edison, Edward Henkel Realty, FHA, Ford Motor Co., Fraser Board of Education, General Motors Corp., Hoffman & Hoffman, Honeywell, Homequity, IBM, Koppers,

Liberty State Bank, Michigan Bank, Michigan Bell Telephone, Michigan Department of State Highways, Mt. Clemens Housing Commission, National Bank of Detroit, Owens-Illinois, Palmer Osteopathic Hospital, Proctor-Homer Warren Co., Simone Corp., 3M, TI Home Transfer, VA, Warren Consolidated Schools, Wayne County Road Commission, Warner-Lambert Pharmaceutical Co.

4. That he has qualified as an expert witness and has testified before the following Courts:

City of Detroit Recorder's Court

Wayne County Circuit and Probate Courts

Oakland County Circuit and Probate Courts

Macomb County Circuit and Probate Courts

Lapeer County Probate Court

U. S. District Court—Eastern District—Southern Division.

5. That market value appraisals have been prepared and made for:

Buyers, sellers, employee transfer, mortgage loans, insurance, probate of estates, federal inheritance and gift taxes, federal income tax, partial and whole takings under 'right of eminent domain' for highways, electric transmission lines, schools, urban renewal programs, parks, and miscellaneous municipal requirements.

6. That he has appraised the following kinds of property:

Single to four family residential, multi-family residential condominiums, co-operatives, motels, mobile

home parks, commercial, stores, service stations, auto wash, light and medium industrial, outdoor advertising, bowling alleys, churches, schools, city hall, athletic field and stadium, professional and general office buildings, (A 149) vacant (residential, commercial and industrial) lots, subdivisions and acreage.

7. That he has read the Affidavits of Mel Razit, William Walsh and Ogust Mai Stewart; that each Affidavit pertains to the negative reactions of persons to the use or occupancy of adjacent real estate; that none of the Affidavits contain any evidence of reduced market value of abutting properties due to the establishment of so-called "adult" book stores or theatres and the negative attitudes engendered thereby.

8. That there are many factors which have tended to, and will continue to, reduce property values in the City of Detroit; that some of those factors are: racial and socio-economic changes in neighborhoods; real estate financing; outmigration of people as well as business and industry; crime; city income tax; a defunct school system, etc.; that with all of these various factors, he does not believe it can be said that the establishment of an "adult" bookstore or theatre has, or will, destroy a neighborhood or the values of the properties therein; that none of the Affidavits—and specifically the Affidavit of Mr. Walsh—provide any data as to the "before and after" values of properties where these "adult" use businesses have been established.

9. That he has reviewed records and data of the *United Northwestern Realty Association Western Wayne County Board of Realtors* (that a photocopy of same is attached hereto and made a part hereof);* that the list of sales in

* Omitted in printing.

section No. 1, covering the area from Purtian Avenue north to Eight Mile Road and from Greenfield Avenue east to Woodward Avenue, provide the following data:

(A 150)

Year	*Period*	*Average Sale Price*
1971	12 mo	$20,853.00
1972	12 mo.	$21,427.00*
	*Increase 1971 to 1972	2.8%
1971	Jan. 1 to April 30	$20,669.00
1972	Jan. 1 to April 30	$20,979.00
1973	Jan. 1 to April 30	$22,273.00*
	*Increase 1971 to 1972	1.5%
	*Increase 1972 to 1973	6.2%
	*Increase 1971 to 1973	7.8%

That these figures are provided to indicate that the general area, wherein "adult" stores and theatres are located at Schaefer Road and Eight Mile Road in the City of Detroit, has shown an increase in residential values over the past two to two and one-half years, in spite of the general deteriorating nature of all commercial property values along the so-called "section line" and "mile road" strip commercial frontages in the same geographical location.

10. That he has personal knowledge of the Eight Mile Road—Schaefer area in the City of Detroit; that his firm has appraised eleven of forty units in the Norfolk Village Condominium with units fronting on Schaefer as well as on Norfolk Court; that Norfolk Court is the first street south of Eight Mile Road and intersects with Schaeffer Road; that these appraisals were completed in February, March and April of 1973; that these "condominiums" were first offered for sale in February 1973 and to date (June 4,

1973) thirty-five of forty units have been sold; that based upon his experience and expertise as an appraiser and real estate broker, the number of sales (thirty-five out of forty) in a brief four month period clearly indicates the visibility of the location.

11. That Norfolk Court Condominium is a part of the Blackstone Manor Apartment complex of 350 to 400 units built (A-151) about 1948; that in 1968 most of the complex was converted to the Blackstone Apartments Co-Operative; that all units (except those later converted to the Norfolk Village Condominium) were sold to buyers on a co-operative basis; that upon information and belief, there is a waiting list of persons for these co-operative units; that upon information and belief, no prospective purchaser of a unit in the Norfolk Village Condominium has made any mention of negative use and occupancy factors along Eight Mile Road that would deter purchase.

12. That based upon his experience and expertise as hereinabove stated, your Affiant states that an in-depth objective study of other residential property sales in the immediate area of Eight Mile Road where these "adult" use properties exist would show no perceptible indication of negative market price activity on a "before" and "after" basis; that if lower prices were obtained that the various reasons or factors, as hereinabove mentioned, would provide the true cause of same.

Further deponent sayeth not.

/s/ James C. Rodgers

Subscribed and sworn to before me
this 7th day of June, 1973.

/s/ Mary T. Korn
Notary Public, Wayne County, Michigan
My commission expires: 9-18-75

APPENDIX L

PARTIAL TRANSCRIPT (pp. 28-32) OF PROCEEDINGS AT ORAL ARGUMENT ON MOTIONS FOR SUMMARY JUDGMENTS, IN NORTOWN AND AMERICAN MINI THEATRES CASES, ON SEPTEMBER 17, 1973, BEFORE THE HONORABLE CORNELIA G. KENNEDY AND HONORABLE LAWRENCE GUBOW

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Mrs. Reilly: Finally the argument seems to be raised time and time again that what we are trying to do is circumvent the First Amendment and prohibit "all kinds of material" which the City deems to be obscene without actually taking the material to trial. It's interesting now that the Miller decision has come down that the description of obscenity is very closely aligned to the definition of adult material as it is set forth in our ordinances; and yet we do not claim that these definitions are the same as the Supreme Court's definition of obscenity. What we have tried to do in enacting these new regulations (A 195, Tr 29) is avoid an adverse effect on our neighborhoods, an adverse effect we see time and time again recurring. We know now that the Court has said that any material which is proven to be obscene may be entirely prohibited; and yet we must be realistic and face facts. It is only after such movies as "Deep Throat" are actually found to be obscene that they may be prohibited. Until that time, when there is a trial on the merits and a decision, a final decision, that material may be disseminated at random and at the will of the person who is operating the theatre or the book store. As the Court knows, on September 13 of this year, "Deep Throat" was ruled not obscene only because the Court held that

our laws presently are insufficient but that the movie itself was, in the opinion of the judges, obscene. So "Deep Throat" continues to be shown. The concern of the neighborhood over the showing of this kind of movie has been evidenced time and again by picketing, by calls and letters to our office, to the Mayor, to the Common Council and so on. I have affidavits here from the man, Doctor Crockmaw, who is immediately adjacent to the Variety Book Store. He has constantly been calling me and saying, "When are you going to help me out? I am losing customers." The fact is that if we do not in some way control the dissemination of what we describe as adult material, it can (A 196, Tr 30) and it has adversely affected our neighborhoods. And the City must take some kind of action. It cannot sit back and wait until this material is finally determined to be obscene or not.

Sometime ago when I first became involved in this lawsuit, I went with some of the obscenity unit police officers to one of the downtown book stores. The first shelves that appear facing the front door when you walk in offer a variety of pocket books which run the gamut of the typical pocket books offered in any drug store. But on the opposite side of that shelf and all the other area which is open to the public, although there is a sign, "Adults Only Permitted Behind This Shelf", is covered with—I would say each shelf covers maybe ten magazines across and five rows down; so each shelf would accommodate 50 separate magazines; and there were approximately five of these large shelves which presented material to the public. Five times 50 is 250 different kinds of magazines and they deal with everything from masturbation to sodomy, flagellation, et cetera, all of the kinds of materials which the Supreme Court says may be ruled obscene. And yet we know that

until these kinds of magazines are taken to court one by one, on a piecemeal basis, there is no way that we can stop the sale or dissemination of this kind of material.

(A 197, Tr 31) Judge Gubow: Doesn't that lend credence to the argument that you are here attempting to do indirectly what you cannot do directly through the obscenity statute?

Mrs. Reilly: No, your Honor. I'll explain why. I laughingly refer to cases on this side—I would use the board, but it seems to have been used—we offer Dick and Jane books to the first grade; then we go up to "Rebecca of Sunnybrook Farm"; then they go to "Catcher in the Rye"; then they go to "Playboy"; then they go to the more explicit sexual kinds of magazines which we are prohibiting here. It is true we cannot do indirectly what we want to do directly if we are not in compliance with the law. But what the court said, the U. S. Supreme Court, in the Miller and Paris Adult Theater case, is that when we are dealing with commercialization in sex, it is a whole new ballgame. And if the City is faced with the actual fact that these kinds of businesses are offering what is truly described as adult material and that adult material is being sold from a business in a commercial enterprise in such a way that it affects the neighborhoods, taking these books piece by piece to court under the obscenity laws is not going to close down the business. Maybe I personally would like to close down the business, but that's not the question here. The (A 1998 Tr 32) City is not attempting to close down the business. The City is attempting to avoid deterioration of the neighborhoods. If "Deep Throat" is cited under a criminal statute and is found to be in violation of the obscenity laws, the owner of the store may be fined or he may be sentenced to jail for a few months; but that does not stop the operation of the business. As I said be-

fore, there may be 250 separate magazines being offered in one book store. Each one in some person's opinion may be obscene. And yet there is no way that the law enforcement officials can take 250 magazines to court and rule they are obscene. And it is common knowledge among those who have worked in this field that even if a magazine is ruled to be obscene, they take the cover off, put a new cover on with a new title, and put it back in the stacks.

Judge Kennedy: What you are saying is that the criminal law won't preserve the neighborhood.

Mrs. Reilly: That's right, your Honor. Thank you. She said it in a nutshell.

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(A 60)

APPENDIX M

STIPULATION TO INCORPORATE BY REFERENCE DEFENDANTS' BRIEFS AND AFFIDAVITS IN NORTOWN CASE, INTO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN AMERICAN MINI THEATRE CASE

(U. S. District Court—Eastern District of Michigan—(Southern Division)

American Mini Theatres, Inc., a Michigan corporation, and Pussy Cat Theatres of Michigan, a Michigan corporation, Plaintiffs, vs. Roman Gribbs, Mayor of the City of Detroit; John Nichols, Police Commissioner of the Detroit Police Department; Michael Glusak, Corporation Counsel of the City of Detroit; Creighton Lederer, Acting Commissioner of the Department of Buildings & Safety Engineering for the City of Detroit; Charles A. Blessing, Director-Secretary of the City Planning Commission, Jointly and Severally, Defendants.	Civil Action No. 40198

It Is Hereby Stipulated And Agreed by and between the above parties, through their respective attorneys, to incorporate by reference Defendants' Briefs and Affidavits filed in Civil Action No. 39796, Nortown Theatre, Inc., v. Roman

Gribbs, Mayor, et al, into Defendants' Motion for Summary Judgment in this cause, also Answer to Defendants' Motion for Summary Judgment, Memorandum in Opposition to Defendants' Motion for Summary Judgment and Memorandum of Law in Support of Complaint.

Goodman, Eden, Millender,
Goodman & Bedrosian
By: /s/ Ernest Goodman
Attorney for Plaintiffs
3200 Cadillac Tower
Detroit, Michigan 48226
965-0050

Corporation Counsel of the
City of Detroit
By: /s/ Maureen P. Reilly
Attorney for Defendants
1010 City-County Bldg.,
Detroit, Michigan 48226
224-4558

Dated: June 25, 1973

(A 62)

APPENDIX N

DEFENDANTS MOTION FOR SUMMARY JUDGMENT AND AFFIDAVITS IN SUPPORT THEREOF IN AMERICAN MINI THEATRE CASE

(U. S. District Court—Eastern District—
Southern Division)

American Mini Theatres, Inc., a Michigan corporation, and Pussy Cat Theatres of Michigan, Inc., a Michigan corporation, Plaintiffs, vs. Roman Gribbs, Mayor of the City of Detroit; John Nichols, Police Commissioner of the Detroit Police Department; Michael Glusak, Corporation Counsel of the City of Detroit, Creighton Lederer, Acting Commissioner of the Department of Buildings & Safety Engineering for the City of Detroit; Charles A. Blessing, Director-Secretary of the City Planning Commission, Jointly and Severally, Defendants.	Civil Action No. 40198

Now come the defendants, Roman S. Gribbs, Mayor; John F. Nichols, Police Commissioner; Michael M. Glusac, Corporation Counsel; Creighton Lederer, Acting Commissioner of the Department of Buildings and Safety Engineering; Charles A. Blessing, Director Secretary of the City Planning Commission, by their attorneys, Michael M. Glusac, Corporation Counsel; Maureen P. Reilly and John

E. Cross, Assistants Corporation Counsel, and in accordance with the provisions of Rule 56 (b) of the Federal Rules of Civil Procedure move this Honorable Court for a Summary Judgment for the following reasons:

(A 63) 1. The Complaint filed by the plaintiffs fails to state a claim against the defendants upon which relief can be granted.

2. That plaintiffs' allegation of a deprivation of Civil Rights by reason of the enactment of allegedly unconstitutional ordinances is without merit in fact and in law.

This motion is based upon affidavits of Dr. Mel Ravits, Sociologist; William Walsh, Realtor; Ogust Mai Stewart, Realtor; Gail Sheehy, Contributing Editor, New York magazine; and Lino Canevaro, Head Planner, City Plan Commission; Exhibits and Briefs in Support of Motion for Summary Judgment, all of which are filed with this court in the records of Nortown Theatre, Inc., v. Roman Gribbs, Mayor, et al, File No. 39796, and incorporated by reference into this Motion for Summary Judgment by stipulation among the parties.

Respectfully submitted,

Michael M. Glusac,
Corporation Counsel,
Maureen P. Reilly,
John E. Cross,
Assistants Corporation Counsel,
Attorneys for Defendants,
1010 City-County Bldg.
Detroit, Michigan 48226
224-4557
By: /s/ Maureen P. Reilly

June 26, 1973.

APPENDIX P

LIST OF RELEVANT DOCKET ENTRIES IN NORTOWN CASE

(U. S. District Court—Eastern District of Michigan—Southern Division)

Civil Action No. 39796

1973

Mar. 14. Complaint filed.

Mar. 22. Order to Show Cause regarding Preliminary Injunction.

Apr. 2. Motion for Preliminary Injunction; Hearing; Motion denied.

Apr. 24. Defendant's Motion for Summary Judgment, with Affidavits and Memorandum of Law in Support Thereof, filed.

June 8. Petitioner's Answer to Defendant's Motion for Summary Judgment, Affidavit and Memorandum of Law In Support Thereof, filed.

June 11. Motion of American Civil Liberties Union of Michigan to Intervene as amicus curiae, filed.

Sept. 17. Defendant's Motion for Summary Judgment Heard and Argued before the Honorable Lawrence Gubow and the Honorable Cornelia Kennedy.

1974

Mar. 22. Opinion of the Court filed and entered.

Apr. 25. Order of the Court filed and entered.

May 20. Plaintiff's Notice of Appeal filed and Bond on Appeal in the Sum of $250.00 paid to the Court.

1975

Jan. 9. Brief of Appellant filed.

Feb. 8. Brief of Appellees filed.

Feb. 18. Oral Argument in *Nortown Theatre, Inc.* and *American Mini-Theatres, Inc.*, cases before the Hons. Anthony Celebrezze, Pierce Lively, and George Edwards.

June 16. Opinion of the Court decided and filed.

June 16. Judgment of the Court filed.

July 18. Order Staying Mandate filed.

Aug. 28. Petition for Writ of Certiorari filed with U. S. Supreme Court.

Oct. 20. Writ of Certiorari granted by U. S. Supreme Court.

APPENDIX Q

LIST OF RELEVANT DOCKET ENTRIES IN AMERICAN MINI THEATRES CASE

(U. S. District Court—Eastern District of Michigan—Southern Division)

Civil Action No. 40198

1973

May 1. Complaint filed.

June 8. Appearance on behalf of Defendant filed.

June 8. Hearing on Plaintiff's Motion for Preliminary Injunction.

June 12. Opinion and Order Denying Motion for Preliminary Injunction.

July 16. Defendant's Motion for Summary Judgment filed.

July 16. Stipulation to Incorporate by reference Defendants Briefs and Affidavits filed in Civil Action No. 39796 into Defendant's Motion for Summary Judgment, filed.

Sept. 17. Hearing on Cross Motions for Summary Judgment.

1974

Mar. 22. Opinion filed.

May 22. Judgment filed and entered.

June 5. Notice of Appeal to the Sixth Circuit Court of Appeals by Plaintiff from the Judgment entered May 22, 1974.

Nov. 26. Brief of Appellants filed.

Dec. 23. Brief of Appellees filed.

1975

Feb. 18. Oral Argument in *Nortown Theatre, Inc.* and *American Mini-Theatres, Inc.* cases before the Hons. Anthony Celebrezze, Pierce Lively and George Edwards.

June 16. Opinion of the Court decided and filed.

June 16. Judgment of the Court filed.

July 18. Order Staying Mandate filed.

Aug. 28. Petition for Writ of Certiorari filed with U. S. Supreme Court.

Oct. 20. Writ of Certiorari granted by U. S. Supreme Court.